

Appl. No. 10/089,351
Atty. Docket No.8278
Amdt. Dated January 21, 2005
Reply to Office Action of October 29, 2004
Customer No. 27752

REMARKS

Claim Status

Claims 21-40 are pending in the present application. No additional claims fee is believed to be due.

Claims 1, 2, 4-9 and 11-20 are canceled without prejudice.

In addition, new Claims 21-40 have been added.

Support for Claim 21 this amendment is found in Canceled Claim 13, Figure 2, and in the specification on page 8, lines 19-28; page 9, lines 11-13 and 29 to 31; page 32; lines 30-33 and page 33, line 1-3.

Support for Claim 22 is found in canceled Claim 2. Support for Claim 23 is found in canceled Claim 4. Support for Claim 24 is found in canceled Claim 5. Support for Claim 25 is found in canceled Claim 6. Support for Claim 26 is found in canceled Claim 8. Support for Claim 27 is found in canceled Claim 11. Support for Claim 28 is found in canceled Claim 12. Support for Claim 29 is found in canceled Claim 15. Support for Claim 30 is found in canceled Claim 16.

Support for Claim 31 is found on pages 32, line 30 to page 42; line 5 and pages 43, lines 29 to page 62, line 11 in the specification. Support for Claim 32 is found on page 33, line 1 to 4. Support for Claim 33 is found on page 33, lines 6-10. Support for Claim 34 is found on page 35, lines 16-20. Support for Claims 35 and 36 are found at page 52, lines 5-7. Support for Claim 37 is found at page 10, lines 1-24. Support for Claim 38 and 39 is found at page 11, lines 19-27. Support for Claim 40 is found on page 11, lines 24-30.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Rejection Under 35 USC §112, First Paragraph

The Office Action States Claims 1, 2, 4-9 and 11-20 are rejected under 35 U.S.C. §112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the art that the

Appl. No. 10/089,351
Attr. Docket No.8278
Amdt. Dated January 21, 2005
Reply to Office Action of October 29, 2004
Customer No. 27752

inventors, at the time the application was filed, had possession of the claimed invention. Claims 1, 2, 4-9 and 11-20 are canceled without prejudice. Thus, the rejection has been rendered moot by this amendment.

Rejection Under 35 USC §103(a) Over Sasonetti in view of Cahill

Claims 1, 2, 4-7, 9, 13, 15 and 16 have been rejected under 35 USC §103(a) as being unpatentable over Sansonetti (U.S. Patent No. 4,087,675) in view of Cahill (U.S. Patent No. 3,116,732). Claims 1, 2, 4-9 and 11-20 are canceled without prejudice. However, Applicants will address the rejection as it applies to new Claim 21.

Independent Claim 21, and thus Claims 22-40, which depend therefrom, recite a semi-enclosed applicator for distributing a product having a first temperature onto a target surface, said applicator comprising:

(a) a first side having a first external surface;

(b) a second side;

wherein said first side and said second side are joined to form an internal cavity therebetween, said internal cavity having at least one externally accessible opening;

(c) a rupturable reservoir located proximate to said first side; said rupturable reservoir comprising said product; and,

(d) a heating and/or cooling element located proximate to said rupturable reservoir;

wherein said heating and/or cooling element changes said first temperature of said product upon activation;

wherein said product is released from said reservoir to said target surface through said first external surface of said first side upon rupturing of said rupturable reservoir.

Applicants respectfully submit that the obviousness rejection is improper because the Examiner has not established a *prima facie* case of obviousness. To establish a *prima facie* case of obviousness under 35 U.S.C. §103(a), all the claim limitations must be taught or suggested by the prior art. *In re Royce*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974); MPEP §2143.03. In the present case, the Examiner has not shown that all of the

Appl. No. 10/089,351
Atty. Docket No.8278
Amdt. Dated January 21, 2005
Reply to Office Action of October 29, 2004
Customer No. 27752

claim limitations are taught or suggested by Sansonetti in view of Cahill. Thus, the Examiner's rejection is improper.

The Office Action states that Sansonetti discloses a semi-enclosed applicator in the form of a mitt or glove for distributing a product having a first temperature onto a target surface. The Office Action states that the applicator of Sansonetti has the claimed features including a first side having a first external surface, a second side wherein the first side and second side are joined in a face-to-face relationship and form an internal cavity therebetween, the internal cavity having an opening that is externally accessible, a rupturable reservoir containing a product located within the internal cavity proximate to the first side, and activatable heating/cooling element located proximate to the reservoir on to the target surface through the first side. The Office Action admits that Sansonetti fails to teach the product being released from the reservoir with the application of pressure to the rupturable reservoir. The Office action states that Cahill is directed to a mitten or glove for use in the application of hand cream having at least one product contained in the reservoir sealed by a membrane which ruptures when pressure is applied in order to effect a desired application of the hand treatment or product to affected parts of the hand. The Office Action concludes it would have been obvious to one of ordinary skill in the glove/mitten art, at the time the invention was made, to seal the reservoir of Sansonetti with a membrane that rupture in response to pressure being applied thereto in view of the teachings of Cahill in order to better control the application of hand cream to specific parts of the hand.

A *prima facie* case of obviousness has not been met because the prior art references do not teach or suggest all of the claim limitations in newly added Claim 21. For example, the references do not teach or suggest a semi-enclosed applicator for distributing a product having a first temperature onto a target surface, wherein said product is released from the rupturable reservoir to the target surface through the first external surface of the first side upon rupturing of the rupturable reservoir. In fact, both Sansonetti and Cahill teach the opposite. Both Sansonetti and Cahill teach mitten or gloves that releases hand treatment to an internal surface of the mitten or glove for the application of the hand treatment to the hand which is enclosed in the mitten or glove. Therefore, the combination of Sansonetti and Cahill does not teach or suggest each and

Appl. No. 10/089,351
Atty. Docket No. 8278
Amdt. Dated January 21, 2005
Reply to Office Action of October 29, 2004
Customer No. 27752

every element within Claim 21. Therefore, the combination of references, even if proper, do not render Claims 21- 40 obvious under 35 U.S.C. § 103.

Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejection under 35 U.S.C. §112 and 35 USC §103(a). Early and favorable action in the case is respectfully requested.

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 21 to 40 is respectfully requested.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY

By Bridget Murray
Signature
Bridget Murray
Registration No. 52,555
(513) 626-0575

January 24, 2005
Customer No. 27752